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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1998

Addendum

MOROCCO*

[2 September 1998]

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* The initial report submitted by the Government of Morocco is contained in document CAT/C/24/Add.2; for its consideration by the Committee, see documents CAT/C/SR.203 and 204/Add.1 and 2, and Official Records of the General Assembly, Fiftieth Session, Supplement No. 44 (A/50/44), paras. 105-115.

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Introduction

1. The Kingdom of Morocco ratified the Convention against Torture in June 1993 and submitted an initial report in 1994. This year it is submitting its second periodic report on measures taken to implement its commitments, in accordance with the provisions of article 19 of the aforementioned Convention.

2. The Government of Morocco has noted the observations and recommendations made by the Committee when it considered the initial report. It reaffirms its openness to fruitful cooperation and constructive dialogue aimed at implementing the Convention.

3. During the last four years, Morocco's determination to promote human rights has been consolidated in a new revision of the Constitution (September 1996), whose preamble states that "aware of the need to set its action within the context of the international organizations of which it is an active and energetic member, the Kingdom of Morocco adheres to the principles, rights and obligations deriving from the charters of those organizations and reaffirms its commitment to human rights as they are universally recognized".

4. In April 1998, His Majesty the King appointed a new Government following the local and general elections held in Morocco at the end of 1997. In its investiture statement before Parliament, the Government clearly affirmed its determination to carry out a policy of promoting and protecting human rights in various areas and of strengthening the rule of law.

I. INFORMATION OF A GENERAL NATURE

A. Constitutional provisions

5. Morocco is a constitutional, democratic and social monarchy.

6. Legislative authority is exercised by Parliament which, since the revision of the Constitution in 1996, consists of two chambers: the Chamber of Representatives and the Chamber of Councillors. The members of the Chamber of Representatives are elected by universal direct suffrage. The Chamber of Councillors is elected by representatives of local communities, professional bodies and employees. The constitutional reform of 1996 enlarged Parliament's powers and made the Government more answerable to Parliament. Since 1992, parliamentary control has been increased through the new option to create parliamentary commissions of inquiry to gather information on certain events. The workings of these commissions were laid down in a fundamental law promulgated on 29 November 1995.

7. The judiciary is independent of the legislative and executive authorities. Judges are nominated by the High Council of the Magistrature and appointed by Dahir. The composition of the Council is laid down in the Constitution. It is made up of the King, who is its president, the Minister for Justice, who is the vice-president, and nine judges. Judges are subject to the magistrature's statutes. The High Council of the Magistrature ensures that guarantees on the promotion and discipline of judges are applied. Judges are irremovable.

8. The 1992 Constitution, revised in 1996, clearly affirms its commitment to respecting human rights in its preamble: "Aware of the need to set its action within the context of the international organizations of which it is an active and energetic member, the Kingdom of Morocco adheres to the principles, rights and obligations deriving from the charters of those organizations and reaffirms its commitment to human rights as they are universally recognized." This affirmation in the Constitution illustrates the importance that Morocco attaches to respect for human rights which, because they are enshrined in the Constitution, are all the more forcefully observed within the various organs of the State.

9. Title I of the Constitution (arts. 1 to 18) guarantees all citizens fundamental rights: equality before the law, equal political rights for citizens of both sexes, freedom of movement and of establishment in all parts of the Kingdom, freedom of opinion and expression in all its forms, freedom of assembly and association, and freedom to belong to any trade union or political organization. The right to education and to work, access to public functions and public employment under the same conditions for all citizens, the right to strike, the right to own property, and freedom of enterprise are also guaranteed.

10. Article 10 in the same title of the Constitution unambiguously sets out the principle of legality of offences and punishments and affirms the inviolability of the home, stating explicitly that "searches and inspections may be carried out only under the conditions and in the forms provided for by law". The principle of legality is formulated in such a way as to encompass not only the legality of offences and punishments, but also procedural legality: "No one may be arrested, detained or punished except in the circumstances and the forms provided for by law."

B. International Conventions

11. The Kingdom of Morocco is a party to most international conventions on human rights. These include:

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, ratified in 1979;

The International Convention on the Elimination of All Forms of Racial Discrimination (1970);

The Convention on the Rights of the Child (1993);

The Convention on the Elimination of All Forms of Discrimination against Women (1993)

12. Morocco has also ratified the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, as well as the International Labour Organization Conventions No. 29 concerning Forced or Compulsory Labour and No. 105 concerning the Abolition of Forced Labour.

13. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 21 June 1993, was published in the Official Bulletin (No. 4440 of 19 December 1996).

14. Publishing an international convention helps to make it more widely known. However, this has legal consequences also, because it is the settled judicial practice of the Supreme Court that, when there is a contradiction between a domestic law and an international law, the latter prevails, provided that it has been published in the Official Bulletin (for example, decisions No. 49 of 1 October 1976, No. 5 of 3 November 1972 and No. 162 of 3 August 1979).

C. The authorities concerned

15. The authorities concerned are, first and foremost, those whose task is to promote and protect human rights - the Ministry responsible for human rights and the Advisory Council on Human Rights.

16. Since 1993, Morocco has had a Ministry responsible for human rights, whose remit includes:

Examining all legislative and regulatory texts in order to assess how they conform to human rights principles and to propose necessary corrections;

Identifying possible causes of non-observance or non-application of principles and rules relating to human rights and working to ensure that they are more stringently observed;

Proposing measures to help create and develop institutions capable of strengthening respect for and promotion of human rights;

Putting into practice all educational, pedagogical and other means for disseminating, promoting and consolidating human rights culture;

Strengthening dialogue and consultation with organizations directly or indirectly concerned with human rights.

17. The Advisory Council on Human Rights was created by Dahir in 1990. According to the text's explanatory introduction, the Council's objective is to ensure the highest degree of respect for human rights. Its role is to assist the sovereign in all matters concerning human rights. The Council is chaired by the first president of the Supreme Court; it is made up, first of all, of five Ministers (Justice, Foreign Affairs, Interior, Religious Endowments (Habous), Human Rights) and, secondly, of representatives of various civil organizations (political parties, trade unions, human rights associations, the Association of Moroccan Magistrates, the Moroccan Bar Association, university professors, the National Medical Association). The Council may also include individuals chosen for their expertise in human rights matters. The Council examines questions referred to it by its president, on which the sovereign wishes to consult it; it may, by its own initiative and if a two-thirds majority of its members so wish, also examine issues of which it feels the sovereign should be informed.

18. The authorities more specifically concerned with ensuring that the provisions of the Convention against Torture are respected are those which are assigned responsibility for criminal investigations under the Code of Penal Procedure, the judicial authorities, and prison administration officials.

19. Persons holding the rank of criminal investigation officer are listed in article 20 of the Code of Penal Procedure. They belong to the gendarmerie and the national police. They are responsible for reporting offences, gathering evidence and finding perpetrators, supervised by the Crown Prosecutor and the head of the prosecution service and monitored by the criminal chamber of the Appeal Court (art. 16, et seq. of the Code of Penal Procedure).

20. The judicial authorities ensure that criminal proceedings run smoothly. In accordance with the provisions of the Code of Penal Procedure, they are responsible for monitoring the criminal investigation department. They deal also with all acts detrimental to the freedoms and physical integrity of persons being prosecuted, in accordance with the provisions of the Penal Code and the Code of Penal Procedure.

21. The head of prison administration and rehabilitation at the Ministry of Justice is responsible for executing judicial decisions where a custodial sentence or measure is delivered.

D. Disciplinary measures and measures to increase awareness

22. The subject of human rights is taught in police and gendarme training colleges, as well as in military academies (see under article 10). The National Institute of Judicial Studies, responsible for training judges, also provides teaching on human rights, in addition to a course on professional ethics.

23. Police officers, gendarmes and, in general, all officials who exceed their authority in the course of their duties can be prosecuted and punished with disciplinary measures imposed by their superiors and also with penal measures if the action constitutes an offence.

24. At the Ministry of the Interior, from 1 January 1997 to 20 April 1998, 35 police officers of all ranks (from constable to commissioner) were brought to trial for various offences and acts exceeding their authority. During the same period, 266 other officials, from the rank of constable to that of commissioner, were subject to administrative penalties for unseemly or unsatisfactory conduct.

25. According to statistics compiled and published by the Ministry of Justice, from 1 January 1994 to the end of February 1998, 31 cases were brought against criminal investigation officers and State officials for violence and abuses committed in the course of their duties. These cases concerned:

20 police officers, including 1 divisional commissioner and 2 inspectors;

8 prefects (caids);

3 sub-prefects (khalifas);

3 gendarmerie chiefs;

1 deputy mayor (moqadem);

1 prison warden;

1 security officer.

The grounds for these cases were:

Assault and battery, use of violence: 15;

Arbitrary detention: 12;

Illegal search: 3.

Other charges were brought for:

1 instance of rape;

1 instance of invasion of privacy;

Several instances of abuse of authority.

The outcome of the cases was as follows:

3 cases resulted in a criminal conviction, one of which was the subject of an appeal to the Supreme Court;

1 case was dismissed;

1 case resulted in an acquittal;

The other cases are continuing.

II. INFORMATION RELATING TO ARTICLES 2 TO 16 OF THE CONVENTION

Article 2: Prohibition of acts of torture

26. The prohibition of acts of torture is, in the first place, laid down in the Constitution, article 10 of which states that no one may be arrested, detained or punished except in the circumstances and forms provided for by law. By referring to "forms provided for by law", the Constitution demands that, in criminal proceedings and sentencing, the rules stipulated by the Code of Penal Procedure be respected, especially during interrogations and imprisonment. This in itself constitutes a prohibition of torture.

27. The regulations set out in the Code of Penal Procedure (Dahir of 10 February 1959) fully respect the rights and dignity of the person being prosecuted. The introductory text to the Code, which was published at the same time, is absolutely clear on that point, stating that "only a penal

procedure which guarantees freedom of defence and which, in short, protects citizens against errors and abuses committed in society's name, is worthy of a free country".

28. While the presumption of innocence is not mentioned explicitly in any article of the Code of Penal Procedure, it can safely be said to form the basis of most of its provisions. This is emphasized also in the introductory text: "Presumption of innocence shall apply to all, both to those accused for the first time and to repeat offenders, whose previous offences may not, under any circumstances, be cited as proof of guilt".

29. A preliminary draft of the Code of Penal Procedure, prepared by the Ministry of Justice, was studied by the Advisory Council on Human Rights, which ensured that the text conformed to the principles contained in international instruments relating to human rights; it is due to be referred to Parliament in the near future. The draft version explicitly provides, in its very first article, that all persons are presumed innocent until their guilt is legally established during a public trial where all guarantees necessary for their defence have been assured. The same article states that the accused is given the benefit of any doubt.

30. The Penal Code allows for the punishment of possible violations of the integrity of a person being prosecuted, during his trial, or of a convicted person, while he is serving his sentence.

Article 3: Prohibition of the return, refoulement or extradition of a person to another State where he might be in danger of being subjected to torture

31. The entry of aliens into Morocco and their right to settle and reside there are governed by Dahirs and/or bilateral conventions. The main documents on this subject are the Dahirs of 15 November 1934 and 21 February 1951 on aliens working in Morocco and the Dahir of 16 May 1941 governing residence permits.

32. An alien may be expelled from Morocco either for not abiding by the conditions of entry, settlement and residence laid down in the legal provisions, or for committing a serious breach of public order. The alien's residence application may then be turned down or his permit withdrawn by decision of the Director-General of the Criminal Investigation Department, or he may be returned by decision of the governor, or he may be expelled by a decision made either by the Director-General of the Criminal Investigation Department or by the Minister of the Interior. Such measures are adopted by administrative decision and the alien can always appeal to the relevant administrative court for their annulment.

33. Morocco acceded on 7 November 1956 to the Convention relating to the Status of Refugees, dated 28 July 1951, and on 20 April 1971 to the Protocol relating to the Status of Refugees, dated 18 November 1966.

34. In accordance with these Conventions, any person requesting asylum because he is persecuted in his own country must report to the headquarters of the High Commission for Refugees in Casablanca. He may then submit an

application for refugee status to the Ministry of Foreign Affairs. When the person's case has been examined and his claims verified, and if the criteria set out in the Convention relating to the Status of Refugees are fulfilled, the person is granted refugee status and is issued with a residence permit specifying this status by the Director-General of the Criminal Investigation Department. In such cases, the issue of a residence permit is not subject to proof of income being produced, as is usually the case for aliens wishing to settle in Morocco.

35. The Dahir of 8 November 1958 relating to the extradition of aliens explicitly provides (art. 5, para. 2) that an extradition request is not granted if the crime or offence on which it is based is of a political nature or if the circumstances indicate that the extradition is politically motivated. Acts committed during a rebellion or civil war by one of the parties involved in order to further its cause are extraditable only if they are acts of extreme barbarity or vandalism prohibited by the laws of war and only when the civil war has ended.

36. Article 7 of the same Dahir further states that extradition requests are granted only on condition that the individual extradited is not prosecuted or punished for any offence other than the one on which the request is based.

37. The principle of refusing extradition for political offences is reiterated in the extradition agreements that Morocco has signed with different States.

38. Morocco's most recent extradition agreements (extradition agreement between Spain and Morocco signed on 30 May 1997 and extradition agreement between Portugal and Morocco in the process of negotiation) further provide that extradition is refused:

> If there is reason to believe that the person in question will be subjected to a procedure which does not afford the guarantees internationally considered to be essential for ensuring respect for human rights, or that he will serve his sentence in inhumane conditions;
>
> If there is serious reason to believe that the extradition request has been drawn up for the purpose of implementing a penalty or instituting proceedings based on considerations of race, religion, nationality or political opinion, or that the person is in danger of receiving worse treatment on account of one of those considerations.

39. Extradition is not applicable to Moroccan nationals and they may in no circumstances be exiled or banished from the territory of Morocco. Exile does not feature in the list of penalties and security measures provided for in the Penal Code; therefore, in accordance with the constitutional principle of legality of offences and punishments, no one may be exiled. In the Penal Code, there are certainly penalties or security measures which restrict freedom (for example, obligation to reside in a particular place, local expulsion) but in no way can they be likened to exile.

Article 4: Classification of acts of torture, attempts to commit torture and complicity in torture as crimes

1. Classification of torture as a crime

40. The Penal Code dates from 1962 and has not been amended since Morocco acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Although this Code does not provide for classifying torture, as defined in article 1 of the Convention, as a crime, several of its provisions permit the punishment of acts of torture (arts. 225 to 232, 259 and 436 to 440).

Assault and battery

41. Articles 400 to 404 of the Penal Code punish "anyone who commits assault and battery or other acts of violence against another person". Assault and battery and other acts of violence are punished in proportion to the injury caused. These punishments are summarized in the following table:

Injuries suffered	Nature of the offence	Punishment	Act involving premeditation, felonious intent or a weapon
No unfitness for work or unfitness of less than 20 days (art. 400)	Minor offence	One month to one year's imprisonment and/or a fine	Six months to two years' imprisonment and a fine
Unfitness for work of more than 20 days (art. 401)	Correctional offence	One to three years' imprisonment and a fine	Two to five years' imprisonment and a fine
Mutilation or any permanent disability (art. 402)	Crime	Five to 10 years' imprisonment	Ten to 20 years' imprisonment
Death (without intent to kill) (art. 403)	Crime	Ten to 20 years' imprisonment	Life imprisonment

Violence committed by an official

42. Article 231 of the Penal Code punishes any judge, public official, or law enforcement official who, without legitimate grounds, uses or orders the use of violence against persons in or in connection with the exercise of his functions. He is punished for such violence according to its seriousness, pursuant to the provisions of articles 401 to 403. However, the applicable penalty is increased as follows:

In the case of a minor or correctional offence, the penalty is doubled; in the case of a crime punishable by a prison sentence, the penalty applicable is life imprisonment.

Injuries suffered	Nature of the offence	Punishment	Act involving premeditation, felonious intent or a weapon
Unfitness for work of more than 20 days (art. 401)	Correctional offence	Two to six years' imprisonment and a fine	Four to 10 years' imprisonment and a fine
Mutilation or any permanent disability (art. 402)	Crime	Life imprisonment	Life imprisonment
Death (without intent to kill) (art. 403)	Crime	Life imprisonment	Life imprisonment

43. Article 400 of the Penal Code provides that:

> "anyone who commits assault and battery or other acts of violence against another person, if the violence has caused no illness or unfitness for work, or if it has caused illness or unfitness for work of less than 20 days, shall be punished by one month to one year's imprisonment and a fine of 120 to 500 dirhams or by one of those two penalties alone".

The only legitimate grounds are self-defence or employing lawful measures to apprehend an accused or convicted person or to keep him at the authorities' disposal.

44. Article 224 of the Penal Code gives a very broad definition of officials as "all persons who, in some capacity, have a paid or unpaid function or mandate, even a temporary one, and who work in that capacity for the State, public administration, local authorities, public institutions or other public services".

45. Holding a position of legal authority, which is considered a justification overriding offences under article 124, paragraph 1, of the Penal Code, does not justify violence in such cases, since the text states very clearly that those who "use or order the use of violence" are punishable. Therefore, the person who gives the order and the person who carries it out both incur punishment.

2. Attempt

46. According to the Penal Code (arts. 114 et seq.), an attempt consists of the commencement of the commission of the offence, or unambiguous acts which are directly intended to commit the offence and which were interrupted or

failed to achieve their aim because of circumstances beyond the perpetrator's control. It is always punishable in the case of crimes; in the case of minor offences, it is punishable only by virtue of a special provision of the law. Attempt is treated and punished in the same way as the completed offence.

47. In the case of assault and battery, since an offence which has only been attempted has, by definition, remained without consequence, it is impossible to know the nature of the incapacity which would have been caused and, consequently, whether it would have been a crime or a minor offence. Since the law is silent on attempted assault and battery, the latter is therefore not punishable.

48. However, attempted assault and battery can always be punished as an act of violence which has not caused incapacity (art. 400). Punishable violence includes not only physical violence directly inflicted on a victim without causing incapacity, but also acts which, without any physical contact, are likely to impair the victim's physical integrity because of the emotional or psychological shock experienced. (For example, threatening someone with a revolver, or even menacing behaviour which causes the victim to try to escape by jumping out of a window, can be considered as such an act.)

49. Thus, according to case law, "an act of violence does not necessarily imply direct and violent physical contact with the victim and may be characterized by an action or attitude likely to cause acute fear or intense distress in the victim". Admittedly, the penalty is only correctional (one month to one year's imprisonment and/or a fine), but it is one which may be imposed.

3. Complicity

50. Under the Penal Code (arts. 128 to 131), all those who have personally taken part in an offence are considered to be co-perpetrators. All those who, without participating directly in an offence, have deliberately caused it to be committed or provided means or assistance for it, are considered to be accessories. Complicity in both minor offences and crimes is always punishable. Complicity in assault and battery and lesser acts of violence is always punishable.

Article 5: Extension of Moroccan jurisdiction

1. Jurisdiction over offences committed in Morocco

51. Moroccan criminal law is of territorial scope, as provided for in article 10 of the Penal Code: "All persons in the territory of the Kingdom, whether nationals, aliens or stateless persons, shall be subject to Moroccan law, except as otherwise provided by internal public law or by international law". This principle of territoriality is also established by the Code of Penal Procedure, article 748 of which provides that Moroccan courts are competent to try all offences committed in Moroccan territory, regardless of the perpetrator's nationality. The commission of the principal offence in Moroccan territory gives Moroccan courts jurisdiction, even if some elements of the offence were committed abroad and regardless of the nationality of the co-perpetrators.

52. Moroccan territory includes Moroccan ships and aircraft, wherever they may be, except if they are subject to the law of another country, in accordance with international law (article 11 of the Penal Code, articles 749 and 750 of the Code of Penal Procedure).

2. Jurisdiction over offences committed abroad

53. In Book VII of the Code of Penal Procedure, entitled "Jurisdiction over certain offences committed outside the Kingdom and relations with foreign judicial authorities", a chapter is devoted to jurisdiction over offences committed outside Morocco (arts. 751 to 756); a distinction is made here between Moroccans and foreigners.

54. Acts of torture committed abroad by Moroccans may be tried by the Moroccan courts. All acts classified as crimes or offences by Moroccan law and committed outside Morocco may be prosecuted and tried in Morocco, except that prosecution and trial may take place only when the offender has returned to Morocco, if he cannot prove that he has irrevocably been tried abroad and, if he has been convicted, that he has served his sentence, that his sentence is time-barred or that he has been pardoned. In the case of an offence against a private individual, proceedings may be instituted only on the motion of the Prosecutor's Office acting on a complaint by the injured party.

55. Moroccan courts do not have jurisdiction over foreigners. This follows from article 755 of the Code of Penal Procedure, which recognizes the jurisdiction of Moroccan courts for offences committed by aliens outside Morocco only in the case of a crime against Moroccan State security or the counterfeiting of coins or notes that are legal tender in Morocco.
Article 701 of the draft Code of Penal Procedure provides for the jurisdiction of Moroccan courts over crimes committed by an alien outside Morocco, when the victim of the crime is of Moroccan nationality.

Article 6: Arrest and detention of any person suspected of having committed an act of torture

56. Given the rules of jurisdiction laid out under the previous article, a person suspected of an act of torture may be prosecuted, in accordance with the rules of the Code of Penal Procedure, in the following cases:

If the act of torture was committed in Moroccan territory;

If the act was committed abroad by a Moroccan, provided that he was not the subject of a final judgement which has been executed.

In these two cases the person being prosecuted is entitled to all the guarantees granted by the Code of Penal Procedure, at all stages of the proceedings (investigation, arrest, imprisonment, gathering evidence, judgement, judicial remedy).

57. In other cases (acts of torture committed abroad by an alien), the person may be placed in detention:

If he is the subject of an extradition request which fulfils the conditions laid down in the Dahir of 8 November 1958 on the extradition of aliens or, where an extradition agreement exists between Morocco and the requesting State, the conditions laid down in that agreement. In these cases, the person is entitled to the guarantees laid down by the Dahir on extradition, notably the possibility of requesting release on bail (art. 14);

If there is an agreement on mutual legal assistance between Morocco and the State requesting the arrest.

Article 7: Trial or extradition of any person suspected of an act of torture

58. When the Moroccan courts have jurisdiction over an act of torture, the rules laid down by the Code of Penal Procedure for prosecution and trial are applicable, regardless of the nature of the offence and the nationality of the person being prosecuted.

59. Where the offence is classified as a crime, examination proceedings are compulsory if the penalty applicable is death or life imprisonment and optional if the penalty applicable is less severe. Crimes are judged by the criminal chamber of the Appeal Court, a collegiate court consisting of a president and four co-magistrates.

60. Lesser offences come under the jurisdiction of the court of first instance, which is made up of a president and two co-magistrates.

61. The forms of evidence are the same, regardless of the offence being tried. This is laid down in the Code of Penal Procedure, article 288 of which states that offences can be proved by any form of evidence and that the judge makes a decision based on his personal conviction. If he considers that adequate evidence has not been produced, the judge declares the defendant not guilty and acquits him.

Article 8: Classification of acts of torture as crimes for the purposes of extradition treaties

1. Dahir on extradition

62. When there is no bilateral treaty, the Dahir on extradition of 8 November 1958 lays down the conditions, procedure and consequences of extradition. The text does not refer explicitly to acts of torture. However, it defines extraditable acts broadly enough to encompass acts of torture. Specifically, under article 4 of the text, the following acts may give rise to extradition, whether it is being requested or granted:

(i) All acts punishable by criminal penalties under the law of the requesting State;

(ii) Acts punishable by correctional penalties under the law of the requesting State, when the maximum penalty incurred under that law

is two years or more or, in the case of a convicted person, when the sentence handed down by the requesting State's court is two months' imprisonment or more.

63. Extradition is granted only if the act is punishable by a criminal or correctional penalty in Morocco. Acts constituting attempt or complicity are subject to the same rules, provided that they are punishable by the law of the requesting State and by that of the State of which the request is made.

2. Extradition agreements

64. The provisions of the Dahir of 1958 are applicable, as article 1 clearly states, only "if there are no provisions to the contrary arising from treaties".

65. The extradition agreements concluded by Morocco since the ratification of the Convention against Torture refer explicitly to acts of torture. As is the rule in extradition matters, they provide that political offences may not give rise to extradition and state that the following may not be considered as political offences:

Genocide, crimes against humanity, war crimes, and serious offences under the Geneva Conventions of 1949;

Offences set out in article 1 of the European Convention on the Suppression of Terrorism, opened for signature on 27 January 1977;

Acts set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 17 December 1984.

66. These agreements further provide that extradition may be refused "if there is reason to believe that the person in question will be subjected to a procedure which does not afford the guarantees internationally considered to be essential for ensuring respect for human rights, or that he will serve his sentence in inhumane conditions". Extradition can also be refused "if there is serious reason to believe that the extradition request has been drawn up for the purpose of implementing a penalty or instituting proceedings based on considerations of race, religion, nationality or political opinion, or that the person is in danger of receiving worse treatment on account of one of those considerations".

Article 9: Mutual legal assistance between States parties in any proceedings relating to acts of torture

67. Morocco has signed a number of agreements on mutual judicial assistance with different States.

68. Since the ratification of the Convention against Torture, agreements on mutual legal assistance refer explicitly to acts of torture in the same terms as extradition agreements. Since mutual legal assistance can be refused for political offences, the agreements state that "acts set out in the Convention

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 17 December 1984", are not considered as political offences.

69. These agreements also provide that mutual assistance can be refused "if there is serious reason to believe that the extradition request has been drawn up for the purpose of implementing a penalty or instituting proceedings based on considerations of race, religion, nationality or political opinion, or that the person is in danger of receiving worse treatment on account of one of those considerations" and "if granting the request is likely to result in a violation of the person's rights and fundamental freedoms".

70. These provisions are included in the agreement on mutual legal assistance signed with Spain on 25 February 1997 and the agreement currently being negotiated with Portugal.

Article 10. Education and information regarding the prohibition of torture

71. In recent years, there has been a new concern to incorporate education on human rights into university courses, and debate on the subject has begun. This was an issue discussed at a meeting organized by the Law Faculty of Casablanca, in collaboration with the Konrad Adenauer Foundation, on 25 and 26 April 1997, on the topic "Education and research on human rights". As regards instruction, a general discussion on the content of human rights courses and on teaching methods was begun; on the scientific front, the objective was to begin a long-term critical examination of the state of education and research on human rights and to discuss suitable methodological approaches.

72. In universities, human rights teaching is still done mainly by introducing the human rights perspective into disciplines which naturally lend themselves to it; as yet, no separate discipline has been introduced into university programmes. However, some other institutions have already taken this step.

73. The National Institute of Judicial Studies, an establishment for training and retraining judges, which is under the supervision of the Ministry of Justice, incorporated a separate discipline entitled "Human Rights" into its programme three years ago. The new discipline introduced is intended to deal with the different international human rights conventions, their content and their enforcement mechanisms. The Convention against Torture, therefore, forms part of this teaching. The Ministry of the Interior's training college, where senior officials are trained, has also introduced a human rights module into its course. The training college of the Gendarmerie Royale and the college for refresher courses for the Gendarmerie Royale have introduced lectures on human rights topics into their training. The Royal Military Academy runs a course in international human rights protection (Human Rights and International Humanitarian Law) for officer cadets. The subject of human rights is also taught at the Royal Police College to all new recruits, as well as to junior and senior officers during refresher courses.

74. In order to ensure broad dissemination of the principles contained in international human rights instruments, the Ministry responsible for human rights is compiling, with European Union support, a compendium of all the international conventions ratified by Morocco, including the Convention against Torture. This compendium will be intended for all parties concerned with human rights, particularly the authorities, human rights NGOs, training colleges and establishments, etc. The text of the Convention has been widely published by the press, NGOs and specialized publications, including the Police Review which is aimed at all police officers. Also, to improve judges' training, they take part in international meetings and seminars on human rights, organized both in Morocco and abroad. These include, for example:

The seminar on implementing international human rights standards in national legislation, organized by the International Commission of Jurists and the Moroccan Organization for Human Rights (OMDH), in Rabat from 1 to 4 October 1997;

The seminar on the role of justice in human rights protection, organized by the International Federation of Human Rights, the OMDH, the Moroccan Association for Human Rights, and several other NGOs from the Mediterranean region, in Casablanca in February 1998.

75. Finally, it should be noted that, in April 1998, the Ministry responsible for human rights and the office of the United Nations High Commissioner for Human Rights signed a memorandum of intent to create a human rights training and documentation centre in Morocco.

Article 11: Measures to prevent acts of torture during interrogation, detention and imprisonment

1. Police custody

76. Police custody is the detention of a person by the criminal investigation department for the purposes of the investigation. The rules laid down by the Code of Penal Procedure (arts. 68 to 70 and 82) are aimed primarily at setting time limits and preventing them from being exceeded, and at putting referrals to police custody under the supervision of the courts, in order to preserve the suspect's freedom and integrity.

77. Police custody is limited to 48 hours; the period may be extended by 24 hours by written authorization of the Crown Prosecutor. In cases of violation of State security, the time limit is 96 hours and can be extended once. When these periods have expired, the person must be released or brought before the prosecutor. In the context of rogatory commissions (art. 169), the custody period is 24 hours and can be extended to 48 hours by written authorization of the examining magistrate, to whom the person must be presented in order to obtain such an extension.

78. To ensure that these time limits are observed, the Code obliges all criminal investigation officers to indicate, in the record of the statement made by the person held in custody, the date and precise time that the custody period begins and ends. The criminal investigation officer is also required to inform the family of any person whom he decides to hold in police custody.

He is required to submit a daily list of persons held in police custody during the previous 24 hours to the Crown Prosecutor and the Crown Attorney-General (article 69, as supplemented by Act No. 67-90, promulgated on 30 December 1991).

79. When the period of custody ends, the suspect is handed over to the judicial authorities (the Crown Prosecutor or the examining magistrate). In order to prevent and, as appropriate, punish violence which could be inflicted on the person held in custody, the judicial authorities are required to present him for a medical examination if they are requested to do so, or on their own initiative if there are signs that a medical examination is warranted (articles 76 and 127 of the Code of Penal Procedure).

80. Criminal investigations are carried out under the supervision of the Crown Prosecutor and the head of the prosecution service and are monitored by the criminal chamber of the Appeal Court. This monitoring is stipulated in articles 244 to 250 of the Code of Penal Procedure. In accordance with these articles, any criminal investigation officer who does not observe the law's requirements may be suspended or stripped of his rank of criminal investigation officer, and may incur disciplinary or even criminal penalties if his conduct constitutes a criminal offence (for example, violence or arbitrary detention).

81. The Penal Code imposes the punishment of civic dishonour (a criminal penalty) on judges, public officials, law enforcement officials or representatives of public authority who order or carry out an arbitrary act which violates the individual freedom or civil rights of one or more citizens (article 225 of the Penal Code). Moreover, it stipulates the same penalty for public officials, law enforcement officials and representatives of public authority responsible for policing or criminal investigation who have refused or neglected to respond to a claim of illegal and arbitrary detention, either in establishments or premises allotted for holding detainees or anywhere else, and have failed to inform their superiors thereof (art. 227).

82. Circular No. 526 of 3 December 1996 notes the role of government prosecutors in monitoring custody and urges them to visit places of detention to ensure that the legal rules are being respected.

83. Another circular, No. 896/3, dated 27 August 1997, encourages prosecutors to act immediately in the event of a death on police premises. It recommends in particular that an autopsy should be carried out by a forensic scientist or a medical committee, that an investigation should be opened and that any official suspected of violence or torture should be prosecuted.

2. Pre-trial detention

84. Pre-trial detention is imprisonment during examination proceedings, when the circumstances make it necessary (if there is a risk of the accused absconding or of witnesses being intimidated). The Code of Penal Procedure (arts. 152 et seq.) specifies that it is "an exceptional measure". The reason for regulating it is to impose time limits, so that a person presumed innocent is not imprisoned for too long a period, with all the drawbacks which that may entail.

85. Pre-trial detention is possible only in the case of a crime or offence punishable by a custodial penalty. A warrant must be issued for it and it must also be preceded by interrogation as to the identity of the person concerned who must be informed of the charges against him and of his right to receive assistance from a lawyer. The person's lawyer has the right to attend the interrogation.

86. Pre-trial detention may not last more than two months. If continued detention appears necessary at the end of this time, the examining magistrate may extend it by a special substantiated court order, based on reasoned arguments by the Crown Prosecutor. A maximum of five extensions, each for the same period of time, may be made. If the examining magistrate decides not to bring the accused to court, he is released as a matter of right and the examination proceedings continue.

87. In cases of flagrante delicto, if the person is under a detention warrant, he must be brought before the court within three days (article 395 of the Code of Penal Procedure). In the case of a flagrant crime, if examination proceedings are not compulsory and the case seems ready to be tried, the person is placed under a detention warrant and must be referred to the trial court within 15 days at the latest. If the case is not ready to be tried, examination proceedings are opened (article 2 of the Dahir of 28 September 1974).

88. During the examination proceedings, if a person arrested by virtue of an arrest warrant is detained for more than 24 hours in a local prison, he is considered to be arbitrarily detained. Any judge or official who has ordered or knowingly tolerated such detention is liable to the penalties laid down for arbitrary detention (article 141 of the Code of Penal Procedure). The same rule applies to arrest and detention warrants, the time limit for which is 48 hours (art. 149). A detention warrant which places the accused in pre-trial detention may not be issued until after questioning by the judge.

89. The president of the criminal chamber of the Appeal Court monitors and supervises proceedings instituted in all the examining departments of the Appeal Court. He ensures that proceedings are not subject to any delays. To that end, during the first 10 days of each quarter of the year, every examining magistrate submits a list of all cases in progress to the head of the prosecution service, noting for each one the date of the latest action taken in the examination proceedings. In cases of pre-trial detention, he may visit any prison under the jurisdiction of the Appeal Court to check on the situation of an accused person in detention. If he finds the detention to be unjustified, he makes the necessary recommendations to the examining magistrate (articles 240 to 243 of the Code of Penal Procedure).

90. Several circulars from the Ministry of Justice, addressed to the first presidents of the Court of Appeal, the presidents of the courts of first instance and the prosecution service, stress the need to monitor the placing of persons in pre-trial detention, to make wider use of bail and to speed up proceedings in order to reduce the number of persons held in pre-trial detention (particular mention may be made of circulars Nos. 337 bis of 18 March 1991 and 10 of 6 January 1993).

3. Imprisonment

91. The rules set out in the Code of Penal Procedure aim to ensure the protection of persons held in prisons. Article 660 of the Code of Penal Procedure stipulates that detainees are to be inspected at least once every three months by the Crown Prosecutor and the examining magistrate.

92. Under article 661, a supervisory committee in each province or prefecture is essentially responsible for checking the health, safety, hygiene, diet and physical living conditions of detainees. The committee is chaired by the governor or his representative, assisted by the president of the court of first instance, the prosecutors from the courts of first instance and the regional chief medical officer or his representative. This committee or delegated members thereof are authorized to visit the prisons within the prefecture's territory. The committee communicates to the Minister of Justice any comments or criticisms it considers necessary and draws attention to any abuses which are to be halted, as well as any improvements to be made.

93. A guide prepared by the Ministry of Justice for the benefit of detainees, based on the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations, specifies in particular:

The detainee's right to medical examinations and health care;

The right of detainees in solitary confinement to be visited regularly by the in-house doctor; solitary confinement may not last more than 15 days, and any decision to extend it beyond that time is made by the central administration;

The right not to be put in a dark cell and not to be deprived of clothes, blankets or food;

The right not to be handcuffed, except when the person is in a dangerous state of agitation or is being transported outside prison;

The detainee's right to express grievances and to have them heard by the head of the institution, and to submit petitions to the inspection committee or the judicial authorities in respect of any measure he considers to be a violation of his interests;

The right to send letters in confidence to the head of the prison administration;

The detainee's right to complain to the head of the institution or to the central administration if he feels he has been maltreated or roughly handled.

Moreover, the text of the Standard Minimum Rules is displayed in prisons, in a place where prisoners can consult it freely.

94. It should be emphasized that a report on the state of prisons was submitted by the Advisory Council on Human Rights in 1997. This was the culmination of more than five years' work, during which Morocco's prisons were

visited in order to form a detailed picture of the state of each institution and to draw up legislative recommendations, as well as recommendations on the running of the institutions, staff training and improving detainees' living conditions.

95. A circular from the Ministry of Justice, dated 12 September 1997 and distributed to the presidents of the Appeal Court and the courts of first instance and to government prosecutors, urges them to pay particular attention to the situation of prison inmates, to improve respect for the rules on prison visits and inspections, and to inform the Ministry about these areas.

96. A law on prisons will be submitted to Parliament in the near future. It has been studied by the Advisory Council on Human Rights, which has ensured that it conforms with international conventions on human rights and the Standard Minimum Rules.

(a) Overall data on prisons

97. There are 42 prisons in Morocco, distributed over the whole of its territory as follows:

2 prison complexes;

1 central prison;

4 prison farms;

35 civil prisons.

98. However, despite the Moroccan Government's efforts to construct new prisons and renovate existing ones, the prison administration still faces the problem of overcrowding: the number of prisoners rose from 17,419 in 1976 to 46,853 in 1996, an increase of 186.98 per cent.

99. The prison administration is made up of:

4,475 officials (including 368 in administration and 4,089 in prisons);

113 doctors;

230 nurses.

(b) Reform of prison policy

100. The Ministry of Justice is pursuing a policy aimed at humanizing the prison environment so as to bring it more closely into line with international conventions on human rights and the Standard Minimum Rules.

(i) Infrastructure

101. The expansion of prison capacity is designed, first of all, to guarantee human dignity and reinforce detainees' rights and, secondly, to keep detainees near their family environment, particularly in rural areas so that they can pursue occupational training in agriculture.

(ii) Training and education

102. The new penal policy aims to protect society through the rehabilitation and vocational education of detainees so that they can integrate easily into society when they are released.

103. The Ministry of Justice has concluded several partnership agreements with the Ministry of Vocational Training, the Ministry of Education and the Ministry of Youth and Sport, to allow detainees to benefit from national programmes organized by these departments. For example, at the end of the 1997-1998 academic year, certificates of basic or university education were awarded to 1,978 detainees.

(iii) Human resources

104. Prison administration staff play a crucial role in the success of any reform policy. For this reason, the Ministry of Justice has made it a priority to recruit high-level managerial staff and to draw up training and retraining programmes to encourage greater respect for international conventions and the Standard Minimum Rules.

105. In order to make staff more aware of the need to respect detainees' rights, the prison administration continually reminds its officials of the obligations deriving from the commitments entered into by Morocco and from the various laws and regulations in force. Punishments are imposed on prison administration officials whenever an abuse in the exercise of their functions is reported; for example, one official was sentenced to 10 years' imprisonment for assault and battery without intent to kill which nonetheless led to the death of a prisoner.

(iv) Legislation

106. In order to humanize detention conditions and adapt domestic legislation to the provisions of international human rights instruments, the Ministry of Justice has taken the following action:

A draft penal code has been prepared containing provisions aimed at humanizing custodial punishments. This includes alternative penalties;

The Ministry of Justice is working in close collaboration with the General Secretariat of the Government to draw up a law and a decree governing prisons.

The Ministry is ensuring that this law conforms to international human rights instruments.

Article 12: Investigation into the commission of an act of torture

107. The Crown Prosecutor and the examining magistrate are required to present for medical examination any person brought before them at the end of his custody period, if the person so requests, or on their own initiative if there are signs that the person may have been subjected to violence (articles 76 and 127 of the Code of Penal Procedure, as amended in 1991).

108. If the suspicions of violence are confirmed by the medical examination, it is the responsibility of the prosecution service to instigate proceedings against the criminal investigation officer suspected of violence. Articles 244 to 250 of the Code of Penal Procedure stipulate the procedure to be followed. Any dereliction of duty by criminal investigation officers is brought to the attention of the criminal chamber of the Appeal Court by the head of the prosecution service or by its president. The criminal chamber may also act on its own motion when examining any case referred to it. Once a case has been so referred, it orders an investigation on the submission of the prosecution service, and hears the officer accused, who is entitled to have access to his file and to be assisted by a lawyer.

109. Without prejudice to any disciplinary measures which may be taken against a criminal investigation officer by his superiors, the criminal chamber may inform the officer of its findings, suspend him or strip him of the rank of criminal investigation officer. If it considers that he has committed a criminal offence, it refers the case to the prosecution service for appropriate action.

Article 13: Right of victims to lodge complaints with the competent authorities

110. The victim may institute criminal proceedings, either by summoning the perpetrator of the violence directly before the court or, in the case of criminal violence, by presenting himself as a claimant for criminal indemnification before the examining magistrate. The procedure followed in these cases is determined by the provisions of the Code of Penal Procedure.

111. However, there are also non-judicial remedies which enable the victim's rights to be restored and the guilty to be punished. The Ministry responsible for human rights and the Advisory Council on Human Rights are open to complaints from any person who considers that his rights have not been respected. For complainants, this type of extrajudicial remedy has the advantages of simplicity and flexibility. Moreover, those who use this procedure are in no way debarred from subsequent recourse to the courts.

112. Within the Directorate for Consultation and Protection in Human Rights Matters at the Ministry of Human Rights, there is a Department for Receipt and Investigation of Complaints. If the complaint is ill-founded, the complainant is informed and is also told of the reasons for its rejection. If the complaint appears to be well-founded, but does not strictly relate to a violation of rights falling within the Ministry's competence (for example, in the case of a dispute between individuals), the complainant is given the necessary advice on how to resolve his problem through the appropriate channels. Finally, if a complaint which does fall within the Ministry's

competence seems to be well-founded, the case is investigated more fully. If it emerges from the investigation of the case that acts of torture have been committed against a person, the Ministry informs the authorities concerned and the Ministry of Justice so that the case can be pursued in the necessary way.

113. The Advisory Council on Human Rights also looks at complaints relating to violations of individuals' rights. It then requests the bodies concerned with these complaints to conduct inquiries so that, if the truthfulness of the complainant's allegations is established, his rights can be restored and that proceedings can be instituted if a criminal offence has been committed.

Article 14: Right of victims to fair compensation

114. The law does not stipulate a specific compensation mechanism for acts of torture. If such acts are proved, the victim may obtain compensation for material and moral damage suffered, by recourse to the rules on civil liability. The Code of Obligations and Contracts provides that "any act by a person who, without being authorized by law, knowingly and voluntarily causes material or moral damage to another, shall oblige the perpetrator to compensate for the damage" (article 77 of the Dahir containing the Code of Obligations and Contracts).

Article 15: Value of statements obtained under torture

115. The Code of Penal Procedure makes no provision for the nullity of confessions made under torture. However, this does not mean that such confessions have the slightest probative value, since article 288 of the Code of Penal Procedure provides that offences may be established by any type of evidence and that the judge makes a decision on the basis of his personal conviction. If he considers that adequate evidence has not been produced he declares the defendant not guilty and acquits him. Article 289 of the Code further states that the judge may base his decision only on evidence produced in court and discussed orally before him. A victim of torture may, therefore, present his claims at the trial and they will be discussed adversarily in court. The judge may, if necessary, request additional information. He may then dismiss a confession of guilt if any factors cast doubt on its truthfulness, and acquit if he is personally convinced of the defendant's innocence or if he considers that some doubt remains, since one of the fundamental rules relating to proof in criminal cases is that the accused is given the benefit of any doubt.

Article 16: Prohibition of other cruel, inhuman or degrading treatment or punishment

116. The Penal Code has a chapter devoted to crimes and offences violating the freedoms and rights guaranteed to citizens. One of its sections deals with "abuses of authority committed by officials against individuals" (arts. 224 to 232) and punishes:

> Judges, public officials, law enforcement officials or representatives of public authority who order or carry out an arbitrary act which violates the individual freedom or civil rights of one or more citizens;

Public officials, law enforcement officials and representatives of public authority responsible for policing or criminal investigation who have refused or neglected to respond to a claim of illegal or arbitrary detention;

Supervisors and wardens in prisons or other establishments allotted for holding detainees, who accept a prisoner without a lawful detention order;

Judges, public officials, law enforcement officials or representatives of public authority who, acting in that capacity, enter an individual's home against his wishes.

117. The Code contains provisions regarding for attacks on a person's honour or reputation (arts. 443 et seq.). Under these articles, the following are classified as crimes:

Injurious behaviour, which is defined under article 443 as the use of "any offensive expression, term of contempt or invective which is not based on any fact"; it is punished under the Press Code (Dahir of 15 November 1958) by up to three months' imprisonment and/or a fine if the insult was made publicly, and by a fine alone if it was not made publicly (art. 48);

Defamation, defined under article 442 of the Penal Code as "any allegation or imputation of a fact prejudicial to the honour or reputation of persons or entities to which the fact is imputed", is punished under the Press Code (arts. 45 to 51).

118. The Penal Code punishes threats also. Article 429 punishes all threats of attack against another person. The threat is punishable only if it is made under certain circumstances.

119. Attacks on individual freedom and the inviolability of the home are also punishable (arts. 436 to 441). Kidnapping, abduction and hostage-taking are punishable by the death penalty if the person abducted, arrested, detained or kidnapped has been subjected to physical torture.

Conclusion

120. The Moroccan Government reaffirms its determination to work towards strengthened mechanisms for the protection of human rights. It is aware that this is a long-term task which requires medium- and long-term policies aimed at continued harmonization of domestic laws with international standards, and at training on, and improving awareness of, human rights protection, particularly in the case of officials responsible for applying the law.

121. This determination was clearly expressed in the new Government's investiture statement in April 1998. Bills on legislative harmonization are to be presented to Parliament very shortly; these include a bill to amend the Penal Code and one on the laws governing prisons.

122. Finally, an interministerial committee has been set up to supervise the harmonization of national legislation with international conventions ratified by Morocco. Another ministerial committee has been given responsibility for examining and resolving outstanding cases raised by national and international NGOs working in the field of human rights.

123. Moreover, various measures have been taken to increase civil society's involvement in efforts to strengthen the rule of law.